

Response
Application No. 10/621,859
Attorney Docket No. 062374

REMARKS

Claims 1-5, 7-13, 22 and 24-29 are pending in the present application. No amendment has been proposed. It is respectfully submitted that this Response is fully responsive to the Office Action dated October 23, 2006.

Request under 37 C.F.R. 1.105

With regard to the Examiner's request concerning "In Use," the Applicants hereby include as an attachment the very first invoice dated December 3, 2002 for services rendered to a client, D.R. Horton, using the novel and non-obvious drying method and process of the present claimed invention, which resulted from an August 22, 2002 sales meeting with the client

With regard to the Examiner's request concerning "Information used in invention process," the Applicants submit herewith with an Information Disclosure Statement that includes all the references made of record in the co-pending application no. 10/621,860 along with a publication entitled, "Clemson Extension for Residential Housing," which provides a relevant discussion of the meanings of different wood moisture content levels for a residential homeowner. Accordingly, Applicants submit that they are in full compliance with the duty of disclosure required under 37 CFR 1.56.

As to the Merits

As to the merits of this case, the Examiner sets forth the following rejections:

- 1) claims 1-5, 7, 9, 11-13, 22 and 24-29 stand rejected under 35 U.S.C. §102(a) as being anticipated by the ASHRAE Journal article entitled “Preventing Mold by Keeping New Construction Dry.” by Harriman et al. (hereinafter referred to as “the Harriman article”) or in the alternative, under 35 U.S.C. §103(a) as being obvious over the Harriman article;
- 2) claims 1-5, 7, 9, 11-13, 22 and 24-29 stand rejected under 35 U.S.C. §102(a) as being anticipated by Munters’ article entitled “Construction Drying” (hereinafter referred to as “the Munters article”) or in the alternative, under 35 U.S.C. §103(a) as being obvious by the Munters article;
- 3) claims 8 and 10 stand rejected under 35 U.S.C. §103(a) as being obvious over the Harriman article in view of the Munters article; and
- 4) claims 1-5, 7-13, 22 and 24-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Munters article in view of Teagle (USP 6,402,613) or Eller et al. (USP 5,004,483).

Each of these rejections is respectfully traversed.

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The Harriman article:

As indicated in the Response filed August 7, 2006, the Harriman article has a publication date of September 2002. Further, as indicated in the Declaration of Prior Invention under 37 CFR 1.131 filed on January 24, 2006, the Applicants have established an effective filing date which is prior to the September 2002 publication date of the Harriman article.

In item 3 of the Action, the Examiner asserts that the Applicants' declaration under 37 CFR 1.131 filed January 24, 2006 is withheld from further review due to the Examiner's request under 37 CFR 1.105. However, it is submitted that, as discussed above, the Applicants' have fully complied with the Examiner's request under 37 CFR 1.105. As such, it is submitted that the Harriman article is hereby disqualified as prior art under 35 U.S.C. §102 (and 35 U.S.C. §103 via §102) based on the prior invention established in said Declaration. Accordingly, it is believed that the rejections 1 and 3 based on Harriman, as noted above, are improper and therefore withdrawal of these rejections is respectfully requested.

The Munters Article:

With regard to the Munters article, as already argued in the Response filed on January 24, 2006, the Munters article is silent with regard to the features of claim 1 concerning *sealing the space of said construction project where said one or more points is located with a vapor barrier*

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to provide an enclosed area for moisture removal. Independent claims 22 and 25 include similar features.

Moreover, it is submitted that that the Examiner clearly acknowledges this deficiency of the Munters article in the second to last line on page 5 of the Action. More specifically, the Examiner asserts that, “Munters [sic] does not disclose the closed construction building is using vapor barrier to seal.”

In an attempt to cure the above-noted drawbacks and deficiencies of the Munters article, the Examiner relies on the teachings of the newly cited secondary references of Teagle and Eller. However, it is submitted that neither Teagle nor Eller even mentions using a vapor barrier to seal off a space. That is, while Eller may disclose using an air barrier to create negative air pressure in a space when working with hazardous materials to prevent leakage of such materials, it is submitted that an air barrier is completely different from a vapor barrier. Further, Teagle, like Eller, also fails to even mention using a vapor barrier in its disclosure. Instead, Teagle’s is concerned with using a portable environmental control system to evacuate toxic and explosive gasses from an interior space.

In other words, neither Teagle nor Eller teach or fairly suggest the defects of the Munters article regarding *sealing the space of said construction project where said one or more points is*

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located with a vapor barrier to provide an enclosed area for moisture removal, as called for in claim 1. As such, even if, the Munters article is combined with either Teagle or Eller, such combinations would still fail to teach the features of the present claimed invention.

Moreover, it is submitted that one of ordinary skill in the art would not have been motivated to combine either the portable environmental control system of Teagle or the hazardous materials removable control system of Eller with the Construction Drying System of the Munters article, since the systems of Teagle and Eller are completely unrelated or non-analogous to the Construction Drying System of the Munters article.

Furthermore, it is submitted that the Examiner has failed to provide adequate motivation for combining the teachings of Teagle or Eller with the Munters article. That is, the Examiner asserts in lines 1-3 on page 6 that, “[t]herefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to apply the method of using vapor barrier in view of Teagle/Eller et al. so as to produce a closed space to remove undesired elements.” However, as noted above, neither Teagle nor Eller even mentions using a vapor barrier in their respective disclosures. Accordingly, it is respectfully submitted that the Examiner’s rationale for combining the references is without merit.

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For at least these reasons, withdrawal all the rejection based on the Munters article is respectfully requested.

In view of the accompanying remarks, Applicants submit that the claims are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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TEB/nrp

Attachment: Copy of Invoice dated December 3, 2002

Clackamas Restoration Inc.

12615 SE Nixon

Milwaukie, OR 97222

Phone 503-652-3997

Fax 503-786-6792

**Invoice**

Date	Invoice #
12/3/2002	342611

Bill To
D.R. HORTON 4386 S.W. Macadam Ave. Suite 102 Portland, OR 97201

JOB ADDRESS:

Project	P.O. No.	Sub-Invoice
Roads End lot32		

Description	Qty	Rate	Class	Amount
Drying Program	1	495.00		495.00
Total				\$495.00
Payments/Credits				\$-495.00
Balance Due				\$0.00